or dangerous, but merely unsuitable to walk upon because wet and muddy, and walked in the granolithic gutter extending along the curb, she was guilty of contributory negligence barring recovery for her injury, caused by falling in a sewer opening in the gutter; she being required by law to take notice that street gutters must necessarily have inlets to drain them.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 36, Municipal Corporations, §§ 1678, 1679.]

2. Appeal—Review—Harmless Error.—In an action against a city for injury to a pedestrian, any error, in rejecting evidence as to the city's having repaired the place where she was hurt, that others had fallen in the same or similar places in that vicinity, was harmless, where the jury necessarily found for defendant.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, § 4193.]

BROWDER *v.* SOUTHERN RY. CO.

June 13, 1907.

[57 S. E. 572.]

1. Witnesses—Impeachment—Inconsistent Statements by Witness—Competency of Evidence.—Where the original declaration, which had been withdrawn, was filed by the plaintiff's authority and upon information to some extent furnished by him, its averments were admissible upon cross-examination for the purpose of impeaching him.

2. Appeal—Harmless Error—Admissibility of Evidence.—In an action for injuries to plaintiff, a railway employee, due to a defect in a grab iron on a car of defendant, testimony of an employee of the defendant as to the durability of the cars belonging to the same lot as the car on which the plaintiff was injured was not prejudicial to plaintiff.

3. Master and Servant—Injuries to Servant—Contributory Negligence—Methods of Work.—Where plaintiff was employed to inspect cars in a railway yard and remedy such defects as he found, it was his duty to inspect the grab iron on the cars to see that they were in a reasonably safe condition before using them, and he cannot recover for injuries received in a fall caused by the breaking of a defective grab iron on a car he was inspecting where he failed to apply the usual tests to the grab iron to ascertain if it was safe.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, §§ 710-722.]

4. Appeal—Harmless Error—Instructions.—In an action for personal injuries, where the plaintiff on his own evidence was not en-

titled to recover, a verdict for defendant will not be reversed for the error of the court in giving or refusing instructions, since a different verdict could not have been rightly found by the jury.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, § 4227.]

VEITCH *v.* JENKINS.

June 13, 1907.

[57 S. E. 574.]

1. Master and Servant—Independent Contractors and Their Employees—Actions for Negligence of Servants.—L. engaged to purchase material, employ labor, and superintend and erect for plaintiff a certain building, in accordance with certain plans, and to use his best efforts to secure material and labor at the lowest cost, and to render to plaintiff a true account thereof. The estimated cost of the building was not to be exceeded by L. without the consent of plaintiff. L. guaranteed that the workmanship should be first-class, and plaintiff agreed to pay the net cost of material and labor, together with a commission to L. Held, that L. was an independent contractor, and there was no such privity between his employee and plaintiff as would render the employee answerable to plaintiff in damages for defective work.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 1242.]

2. Trial — Questions for Jury — Contracts — Construction by the Court.—Where the relations between parties depended on a written contract unambiguous in its terms, it was the province of the court to construe the instrument, and as a matter of law to determine the relation between the parties.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 46, Trial, § 326.]

TALIAFERRO *v.* SHEPHERD et al.

June 13, 1907.

[57 S. E. 585.]

1. Appeal—Review—Estoppel to Allege Error.—Where defendant made no objection to the admissibility of evidence, and made no motion to exclude it, and tendered evidence to meet it, he could not complain on appeal that it was not admissible under the declaration.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 2, Appeal and Error, §§ 1258-1280.]

2. New Trial—Newly Discovered Evidence—Diligence.—In order to entitle one to a new trial on the ground of newly discovered evi-